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THE Supreme Court of Missouri, in session at St. Louis, met on Monday and delivered over fifty opinions. Owing to the crowded state of our columns, we are unable to give a synopsis of any of these decisions this week. The court adjourned for one week to enable the judges to write other opinions.

WE publish in this number, by request of several subscribers, the case of Sioux City and Pacific Railroad Company v. Stout, to which we have heretofore made reference (*ante*, p. 76), involving the question of the liability of a railway company for injuries to children by an unguarded and unfastened turntable. The very full statement of facts we take from the Legal Gazette.

We publish in this number an interesting opinion of Hon. ARNOLD KREKEL, in the United States District Court at Jefferson City, asserting the validity of proceedings by information instead of indictment, in the prosecution of offences under the internal revenue laws. Our correspondent at Jefferson City, Hon. H. B. Johnson, in sending this opinion, states that heretofore there has been much doubt, even by the Attorney General, as to the validity of this mode of proceeding. The opinion will no doubt prove acceptable and interesting to those of our readers who practice in the federal courts.

The Fourteenth Amendment and the Public Schools.

We learn from an exchange that the Supreme Court of Indiana has pronounced an important decision affecting the rights of colored children of that state to attend the public schools. Indiana had, at an early period, provided by law for the instruction in the public schools, free of charge, of all white children under twenty-one years of age, being children of citizens of the state. The Supreme Court has decided that the adoption of the fourteenth amendment to the constitution of the United States conferred on colored children the same rights in this respect possessed by white children, and that they had a right to enter as pupils the white schools, until separate schools, substantially equal in educational advantages, were provided for them.

The same question has been decided in substantially the same way by the Supreme Court of California in the case of Ward v. Flood, 7 Pacific Law Reporter, 85. The court hold that the latter clause of the first section of the fourteenth amendment to the federal constitution—"nor shall any state * * * deny to any person within its jurisdiction the equal protection of the laws"—secures to each child in California, regardless of the race or color of such child, a legal right to attend as a pupil and receive instruction at the public schools in the state, under the law providing for common schools; that the act of the legislature providing for the maintenance of *separate schools* for the education of children of African or Indian descent, and excluding them from schools where white children are educated, is not obnoxious to constitutional objection. But unless such separate schools be *actually maintained* for the education of colored children, then the latter have a legal right to resort to schools where white children are instructed, and can not be legally excluded therefrom by reason of race or color.

A Lay Opinion of Litigation.

The remark of the Solicitor's Journal that "the prejudice against lawyers is nothing new, nor has it become more reasonable by lapse of time," calls to mind an extremely well-written article from the pen of WALTER B. HILL, Esq., of Macon, Ga., in the January number of the Southern Law Review, showing by a multitude of humorous and sarcastic quotations, what a poor opinion men of letters have had of lawyers in all ages and countries. Lawyers may, however, console themselves with the reflection that men of letters have not generally thought worse of lawyers than of the members of other learned professions or of each other. We all remember the terms in which Swift makes his hero, Gulliver, describe the legal profession of his country to his master, the Houyhnhnm. That was perhaps the most bitter and cutting satire upon our profession that has ever been written. Scarcely less emphatic, but more true to nature, and overflowing with the drollest Western humor, was a speech delivered some years since by a Mr. Elmore, in the Wisconsin legislature, in support of a bill which he had introduced to repeal all laws for the collection of debts.

"Mr. Elmore proceeded to review the present system of collecting debts. It was all a humbug and a cheat, a matter of technicalities and legal shuffling. Lawyers gave advice in order to obtain fees and encourage litigation. Judges made blunders and mistakes. He had a little experience in law, and that was rich. [Laughter.] He would give a history of it. The speaker then related how he had purchased a yoke of oxen about fifteen years ago, paid fifty dollars for them. A few days after, the son of the man of whom he bought the oxen came to him and said the oxen were his. He insisted on having pay over again, and commenced a suit before a justice. The jury didn't agree. Finally, through the basswood justice of the peace, the case went against him. He appealed to the circuit court in Milwaukee. There I lost again, and said to my lawyer: 'I will give you ten dollars to quote Pennsylvania law to Judge MILLER and get a new trial ordered.' [Great laughter.] He took the ten dollars and performed his duty.

"A new trial was then granted and the venue changed to Walworth county. Judge IRVIN was then the judge. Any man who wanted to gain a cause in his court had either to go hunting with him and let the judge claim all the game that was shot, or else pat his dog. I patted his dog. [Laughter.] I fed that dog on crackers. [Renewed laughter.] The case was decided in my favor. When I heard the decision I thought the dog had followed me about long enough. I turned around and gave him a kick. [Laughter.] The yelp of the dog had hardly subsided ere I heard the judge say, 'Mr. Clerk, this judgment is set aside and a new trial granted.' [Great laughter.] Mr. Speaker, that kick cost me $200! [Convulsive laughter.] You have no doubt seen a suit in a justice's court in the country. There is time spent by jurors

and hangers-on, besides other costs, at least $50, besides the ill-feeling and dissensions caused by it. It is all a cheat. The litigants had better sit down and play a game of old sledge to decide the case. It would be more sure to settle the dispute justly."

Grain Gambling—"Options" and "Puts"—"Seller next Month."

Business men will remember that in June, 1872, Peyton Chandler, of the firm of Chandler, Pomeroy & Co., produce brokers and commission merchants of Chicago, made a formidable attempt to make a fortune at other people's expense, by getting up a "corner" in oats. To accomplish this, Chandler purchased, between the 15th of May and the 18th of June, 2,500,000 bushels of cash oats, being all, or substantially all, the cash oats in the market, and also bought June options to the amount of 2,939,400 bushels. The total amount of oats in store in the city on the 18th of June was only 2,700,000 bushels, from which it will be seen that Chandler practically controlled the market up to that time, and the total amount received during the remainder of the month was only 800,000 bushels. As incidental to and part of the machinery of this corner, Chandler also sold what he called "puts," or privileges of delivery to him of oats during the month of June for forty-one cents a bushel, receiving half a cent per bushel for these "puts" or privileges. These "put" contracts were substantially alike in form, and read as follows:

"Received of A. D. $50 in consideration of which we give him or the holder of this contract the privilege of delivering to us or not, at any time prior to three o'clock P. M. of June 30, 1872, by notification or delivery, 10,000 bushels of No. 2 oats, regular receipts, at forty-one cents per bushel in store, and, if received, we agree to pay for the same at the above price. Signed, Chandler, Pomeroy & Co.

"PEYTON R. CHANDLER."

It will be seen by an inspection of this contract that the purchaser of a "put" paid a bonus of one-half cent per bushel for the chance of making or losing which the contract afforded him. The contract meant simply this: that if at any time prior to three o'clock P. M. of the 30th of June, oats should be worth more than forty-one cents per bushel in the market, Chandler should have the privilege of demanding from the holder of the "put" the difference between forty-one cents per bushel and the market price; but that, if at any time during such period, oats should be worth less than forty-one cents per bushel in the market, then the holder of the "put" should be entitled to make a like demand against Chandler. The well-known effort of Chandler to get up a corner in oats produced a powerful combination against him. This combination was aided by a decline in oats at New York, so that on the 18th of June, twelve days before the date of his expected triumph—with "puts" outstanding against him representing 3,700,000 bushels—Chandler and his brokers, Chandler, Pomeroy & Co., failed. The price declined before the close of business on that day from thirtyn-ine to thirty-one cents, and declined during the month of June, so that at one time they were as low as twenty-six cents per bushel. Between the time of the failure and three o'clock on the 30th of June, the holders of the "put" claims made tender to the bankrupt of the quantity of the oats called for by their respective tickets, and the oats not being accepted and paid for, they were sold upon the market on that day or the next, under the rules of the board of trade.

Chandler and his brokers of course were thrown into bankruptcy, and the holders of the "puts" modestly proved up as their claims the difference between the price named in the "put" contract and that for which the cash was made. That is to say, they had the effrontery to ask a court of justice to sanction a gaming contract of the worst and most profligate character; because it was not only, equally with other gaming contracts, pernicious to the parties engaged in it, but also because, by suddenly changing values, it was liable to involve the ruin of many innocent persons. The total amount of claims thus proved up was about $400,000, while the total amount of "margins" or forfeits paid for these "puts" was less than $19,000.

Upon these facts District Judge BLODGETT holds that the contracts were simply wagers, illegal, immoral and against public policy, and such as a court of justice will not aid in enforcing. But he also holds that they fall within the statute of Illinois which permits the recovery of money lost at gaming, and that therefore the claimants will be entitled to prove against the bankrupts' estate the money actually paid as "margins" on those "puts."

It is to be observed, however, that Judge BLODGETT does not go so far as to declare all option contracts void. On the contrary, he says:

"I do not intend to be understood as holding that every option contract for the delivery of grain or stock, or that every "put" is necessarily void, *but only that all these contracts, in the light of the testimony before the court,* were in their essential features gambling contracts. The parties when they made them did not intend to deliver the grain, but only at the utmost to settle the differences. They knew they could not obtain the grain to deliver if Chandler sustained his corner, and their action in buying a "put" was virtually a bet on their part that he could not accomplish what they all knew he was endeavoring to do—that is, keep up the price through June to his own figures—and virtually a bet on his part that he could do so.

Judge BLODGETT's opinion will be found interesting throughout, not only to the lawyer, but also to the general reader. The story of the effort of the bankrupt to get up the corner is exceedingly well told, and the principles of law applicable to the case are clearly brought out. It will be found in the Chicago Legal News of April 11.

Lawyers as Legislators.

A recent attempt of the junior fellows of Trinity College to elect one of their own number, a doctor of medicine, to parliament, upon the avowed principle of the "disestablishment of lawyers," calls forth the following observations from the Solicitor's Journal:

"The prejudice against lawyers is nothing new, nor has it become more reasonable by lapse of time. We have all heard of the '*parliamentum indoctum*' from which all lawyers were excluded, and which Lord Coke dismisses with the remark, 'Never a good law was made thereat.'

"From that day to this the lawyers have been from time to time made the butts of meagre witticisms, and occasionally the victims of the same persistent prejudice. And yet upon their honesty, skill and fidelity, all the most important interests

throughout the kingdom mainly depend. The very men who chatter obscure calumnies against lawyers as a body, are compelled to confide, and do undoubtingly and safely confide their characters, their property, the honor of their families, and, very often, secrets which they scarcely like to acknowledge to themselves, to the keeping of their legal advisers. One would imagine that those who habitually prove themselves worthy of so high a trust can hardly be so unworthy of public confidence as the college trio (emulous, apparently, of the fame of their prototypes of Tooley street) would have the world believe.

"But, further, not only is there no case made for the 'disestablishment' of lawyers, but the exigencies of the public service imperatively demand their establishment. Anyone who has taken the trouble to follow the course of legislation, particularly in the house of commons, can hardly fail to have been struck by the manner in which the whole house, with exceptions so few as to be inconsiderable, leaves all the practical details of legislation in the hands of the lawyers. The house at large may join in a debate on a question of general interest or public policy, but when the second reading has been passed, and the bill has to be put into a workable form in committee, it is upon the lawyers that all the real work falls, and those few lay members who occasionally try their hand at an amendment find the house but too ready to accept the off-hand statement of some practical lawyer that the clause 'wouldn't work,' as an amply sufficient reason for refusing even to consider the question. And we must own that the constituencies at large show themselves fully alive to this consideration, and generally give a lawyer, *cæteris paribus*, the preference.

"But there is a further ground on which it seems to us that lawyers are peculiarly appropriate representatives of a university. As the county members are properly chosen from the owners of property who have great local interests, and the representatives of commerce and industry are naturally found in the members for great towns, so the distinctly 'educated' element in society finds its appropriate entrance into parliament through the universities. Of this element one principal, though not by any means exclusive, test is academical distinction, and it is perhaps not too much to say that no such constituency can safely, except in the case of rare eminence in after life, dispense with this qualification in a candidate for their suffrages. But the most distinguished students of every university are found, with trifling exceptions, in the ranks of the clergy or the bar, and as the former are disqualified by law from sitting in the house of commons, the choice of the electors is almost of necessity limited to the latter. Here and there a physician of distinction may be found who could worthily, so far as professional eminence goes, fill this post, but the training of his life, which more or less secludes him from the arena of wordy contest, is not usually of a kind to fit him to take the lead in debate which ought to be required from the representative of a university. Such cases as Mr. Gladstone and Mr. Beresford Hope are no real exceptions to this rule; brilliant scholars of the highest academical distinction, who are able *at once* to devote themselves to political life, and who, after winning their spurs as members for less important constituencies, are called upon to receive their reward at the hands of their universities, constitute a class always rare, and whose position is entirely exceptional. And it is worthy of remark that certainly one (we believe both) of the gentlemen named had entered upon a course of training for the bar.

"Lastly, in this case *res ipsa loquitur:* any one who will look down the list of the representatives of any university in the kingdom for the last seventy years will, if he has any acquaintance with the modern history of his country, be struck by three reflections: one, how very large a proportion of these representatives have left their mark upon the legislation of the age; another, with how few exceptions they have been selected from the ranks of the lawyers; and the last, that except in one or two remarkable instances, the undistinguished minority includes all the non-lawyers."

Fifty years ago in the United States the law was almost universally regarded by ambitious young men as a stepping-stone to political distinction, and distinction in politics was of equal assistance in acquiring practice at the bar. Accordingly it was common for young lawyers, in the outset of their professional career, to engage actively in politics with the view of promoting their advancement in the way of acquiring business and clients. At the present day this state of things is reversed. Business men who have great interests at stake are, as a general rule, careful not to commit them to lawyers who divide their time between professional business and the labor and excitement of politics. To this rule there are, of course, many and some distinguished exceptions. But it remains, as a general thing true, that old lawyers, solicitous for the professional advancement of their students, do not fail to advise them to let politics alone, at least in the earlier stages of their career.

It is equally true that the influence of the legal profession upon the politics of the country is declining sensibly of late years. The causes of this decline afford a curious theme for speculation. Whether it is due to the fact that the great mass of able and successful lawyers voluntarily avoid politics and devote themselves exclusively to the practice of their profession, or whether it is due to a more general diffusion of intelligence in other ranks of society; or whether this apparent loss of influence is an evidence of the general degradation of the legal profession;—these, and perhaps other things, will have to be considered in coming to an intelligent conclusion upon the question. It is doubtless true that forensic skill and power have much less influence in promoting success at the bar than formerly. The growing disposition on the part of attorneys to waive juries and to submit causes to the final decision of the judge, and the introduction in many states of the referee system in the place of trial by jury, have been a sore decayer of the spread-eagle oratory of former years. years. The decline of forensic eloquence is further promoted by the fact that the experience of every successful counsellor teaches him that success before the highest tribunals depends far more upon that skillful attention to details by which the record is made to exhibit in a clear light the questions in dispute, and upon his skill in the preparation of a written argument which shall not weary the court with irrelevant or unimportant matters, but which shall seize at once upon the chief points in controversy, and present his views of them in clear and forcible language and with logical method. The decline of oratory at the bar and in the legislative councils is further promoted by the great circulation and influence of the press. At this day the humblest citizen looks to the columns of his daily or weekly paper for information as to what is taking place in public affairs; whereas fifty years ago

the stump orator was the great oracle from whose mouth the masses of the people received their political wisdom. To the decline of the forensic power among the members of the legal profession, may doubtless be attributed chiefly the decline of the influence of the profession in the politics of the country. The lawyer being no longer an orator, but simply a scholarly man of business, other men of business are placed in any forensic contest more nearly upon a footing with him.

But there is nothing in this decline of influence to create any alarm on the part of the legal profession. The lawyer never can and never will be dispensed with as a legislator. While the general policy of legislation will henceforth be shaped according to the demands of men of business—merchants, manufacturers and agriculturists; and while the country will never again (if it ever has heretofore) submit to the domination of any one class, or yield to any one class without great jealousy an undue influence in legislation, yet the presence of the practical lawyer will always be necessary in the legislative counsels of the state and nation. In those counsels he will occupy to men of business a relation similar to that of lawyer and client elsewhere. The lay members, preponderating in numbers, will, subject of course to the proper influence of the professional members, dictate the general policy of legislation; while to the professional members will still be assigned most of its technical details. To them, in short, will always belong the highly important duty—a duty which can never be discharged by any but skillful lawyers—of putting legislative bills in such shape that they "will work." Notwithstanding the great learning of the legal profession, and the fact that it is the sympathetic representative of all other classes, it will be an ill day for the country if the work of legislation shall ever be exclusively trusted to lawyers; but it will be a worse day if lawyers shall ever be entirely "disestablished" as legislators, and if legislation shall be entirely committed to those who must be in a great measure ignorant of the laws which already exist. A *parliamentum indoctum* such as Lord Coke denounced, would present a spectacle far more alarming to the well-wisher of his country than a legislature composed exclusively of lawyers.

Negligence—Liability of a Railway Company for an Injury to a Child Caused by an Unguarded and Unfastened Turntable.

SIOUX CITY & PACIFIC RAILROAD COMPANY v. STOUT.

Supreme Court of the United States, October Term, 1873.

1. **Railway Negligence—Injury to Child by Unguarded and Unfastened Turntable—Case in Judgment**—Under certain circumstances a railroad company may be liable, on the ground of negligence, for a personal injury to a child of tender years, in a town or city, caused by a turntable built by the company upon its own unenclosed land, and which is left unguarded and unlocked in a situation which is likely to cause injury to children.

2. **Rule as to Negligence in Case of Children of Tender Years.**—While it is the general rule in regard to an adult that to entitle him to recover damages for an injury resulting from the fault or negligence of another, he must himself have been free from fault, such is not the rule in regard to an infant of tender years. The care and caution required of a child is according to his maturity and capacity only, and this is to be determined in each case by the circumstances of that case. (Railroad Co. v. Gladmon, 15 Wallace, 401, affirmed.)

3. **Railway Negligence—Injury to Strangers.**—While a railway company is not bound to the same degree of care in regard to mere strangers, who are even unlawfully upon its premises, that it owes to passengers conveyed by it, it is not exempt from responsibility to such strangers for injuries arising from its negligence, or from its tortious acts.

4. **Negligence, when a Question for the Jury.**—It is true, in many cases, that where the facts are undisputed, the effect of them is for the judgment of the court and not for the decision of the jury. This is true in that class of cases where the existence of such facts come in question, rather than where deductions or inferences are to be made from them. And whether the fact be disputed or undisputed, if different minds may honestly draw different conclusions from them, the case is properly left to the jury.

Error to the Circuit Court for the District of Nebraska. A report of the case in the court below will be found in 2 Dillon, C. C. 294.

Henry Stout, a child six years of age, and living with his parents, sued by his next friend the Sioux City and Pacific Railroad Company, in the court below, to recover damages for an injury sustained upon a turntable belonging to the said company. The turntable was in an open space, about eighty rods from the company's depot, in a hamlet or settlememt of one hundred to one hundred and fifty persons. Near the turntable was a travelled road passing through the depot grounds, and another travelled road near by. On the railroad ground, which was not enclosed or visibly separated from the adjoining property, was situated the company's station-house, and about a quarter of a mile distant from this was the turntable on which the plaintiff was injured. There were but few houses in the neighborhood of the turntable, and the child's parents lived in another part of the town, and about three-fourths of a mile distant. The child, without the knowledge of his parents, set off with two other boys, the one nine and the other ten years of age, to go to the depot, with no definite purpose in view. When the boys arrived there, it was proposed by some of them to go to the turntable to play. The turntable was not attended or guarded by any servant of the company, was not fastened or locked, and revolved easily on its axis. Two of the boys began to turn it, and in attempting to get upon it the foot of the child (he being at the time upon the railroad track) was caught between the end of the rail on the turntable as it was revolving, and the end of the iron rail on the main track of the road, and was crushed.

One witness, then a servant of the company, testified that he had previously seen boys playing at the turntable, and had forbidden them from playing there. But the witness had no charge of the table, and did not communicate the fact of having seen boys playing there to any of the officers or servants of the company having the table in charge.

One of the boys, who was with the child when injured, had previously played upon the turntable when the railroad men were working on the track, in sight and not far distant.

It appeared from the testimony that the child had not, before the day on which he was now injured, played at the turntable, or had, indeed, ever been there.

The table was constructed on the railroad company's own land, and, the testimony tended to show, in the ordinary way. It was a skeleton turntable; that is to say, it was not planked between the rails, though it had one or two loose boards upon the ties. There was an iron latch fastened to it which turned on a hinge, and, when in order, dropped into an iron socket on the track, and held the table in position while using. The catch of this latch was broken at the time of the accident. The latch, which weighed eight or ten pounds, could be easily lifted out of the catch and thrown back on the table, and the table was allowed to be moved about. This latch was not locked or in any way fastened down before it was broken, and all the testimony on that subject tended to show that it was not usual for railroad companies to lock or guard turntables, but that it was usual to have a latch with a catch, or draw-bolt, to keep them in position when used.

The record stated that "the counsel for the defendant disclaimed resting their defence on the ground that the plaintiff's parents were negligent, or that the plaintiff (considering his tender age) was negligent, but rested their defence on the ground that the company was not negligent, and asserted that the injury to the plaintiff was accidental or brought upon himself."

On the question whether there was negligence on the part of

the railway company in the management or condition of its turntable, the judge charged the jury:

"That to maintain the action it must appear by the evidence that the turntable, in the condition, situation and place where it then was, was a dangerous machine, one which, if unguarded or unlocked, would be likely to cause injury to children; that if, in its construction and the manner in which it was left, it was not dangerous in its nature, the defendant was not liable for negligence; that they were further to consider whether, situated as it was, as the defendant's property in a small town somewhat remote from habitations, there was negligence in not anticipating that injury might occur if it was left unlocked or unguarded; that if they did not have reason to anticipate that children would be likely to resort to it, or that they would be likely to be injured if they did resort to it, then there was no negligence."

The jury found a verdict of $7,500 for the plaintiff, from the judgment upon which this writ of error was brought.

Mr. *Isaac Cook*, for the plaintiff in error, insisted:

1st. That the party injured was himself in fault, that his own negligence produced the result, and that upon well-settled principles, a party thus situated is not entitled to recover.

2d. That there was no negligence proved on the part of the defendant in the condition or management of the table.

3d. That the facts being undisputed, the question of evidence was one of law, to be passed upon by the court, and should not have been submitted to the jury.

Mr. *S. A. Strickland, contra.*

Mr. Justice HUNT delivered the opinion of the court.

1st. It is well settled that the conduct of an infant of tender years is not to be judged by the same rule which governs that of an adult. While it is the general rule in regard to an adult, that to entitle him to recover damages for an injury resulting from the fault or negligence of another, he must himself have been free from fault, such is not the rule in regard to an infant of tender years. The care and caution required of a child is according to his maturity and capacity only, and this is to be determined in each case by the circumstances of that case. Railroad Co. v. Gladmon, 15 Wallace, 401.

But it is not necessary to pursue this subject. The record expressly states that "the counsel for the defendant disclaim resting their defence on the ground that the plaintiff's parents were negligent, or that the plaintiff (considering his tender age) was negligent, but rest their defence on the ground that the company was not negligent, and claim that the injury to the plaintiff was accidental or brought upon himself."

This disclaimer ought to dispose of the question of the plaintiff's negligence, whether made in a direct form or indirectly under the allegation that the plaintiff was a trespasser upon the railroad premises, and therefore can not recover.

A reference to some of the authorities on the last suggestion may, however, be useful.

In the well-known case of Lynch v. Nurdin, 1 Adolphus and Ellis (New Series, 29), the child was clearly a trespasser in climbing upon the cart, but was allowed to recover.

In Birge v. Gardener, 19 Conn. 507, the same judgment was given and the same principle laid down. In the most of the actions, indeed, brought to recover for injuries to children, the position of the child was that of a technical trespasser.

In Daily v. Norwich and Worcester Railroad Company, 26 Connecticut, 591, it is said the fact that the person was trespassing at the time was no excuse, unless he thereby invited the act, or his negligent conduct contributed to it.

In Bird v. Holbrook, 4 Bingham, 628 (see also Loomis v. Terry, 17 Wendell. 496; Wright v. Ramscot, 1 Saunders, 83; Johnson v. Patterson, 14 Conn. 1; State v. Moore, 31 id. 479), the plaintiff was injured by the spring guns set in the defendant's grounds, and although the plaintiff was a trespasser, the defendant was held liable.

There are no doubt cases in which the contrary rule is laid down. But we conceive the rule to be this: that while a railway company is not bound to the same degree of care in regard to mere strangers, who are unlawfully upon its premises, that it owes to passengers conveyed by it, that it is not exempt from responsibility to such strangers for injuries arising from its negligence or from its tortious acts.

2d. Was there negligence on the part of the railway company in the management or condition of its turntable?

The charge on this point (see *supra*) was an impartial and an intelligent one. Unless the defendant was entitled to an order that the plaintiff be non-suited, or, as it is expressed in the practice of the United States courts, to an order directing a verdict in its favor, the submission was right. If, upon any construction which the jury was authorized to put upon the evidence, or by any inferences they were authorized to draw from it, the conclusion of negligence can be justified, the defendant was not entitled to this order, and the judgment can not be disturbed. To express it affirmatively—if, from the evidence given, it might justly be inferred by the jury that the defendant, in the construction, location, management or condition of its machine, had omitted that care and attention to prevent the occurrence of accidents which prudent and careful men ordinarily bestow, the jury was at liberty to find for the plaintiff.

That the turntable was a dangerous machine, which would be likely to cause injury to children who resorted to it, might fairly be inferred from the injury which actually occurred to the plaintiff. There was the same liability to injury to him, and no greater, that existed with reference to all children. When the jury learned from the evidence that he had suffered a serious injury by his foot being caught between the fixed rail of the road-bed and the turning rail of the table, they were justified in believing that there was a probability of the occurrence of such accidents.

So, in looking at the remoteness of the machine from inhabited dwellings, when it was proved to the jury that several boys from the hamlet were at play there on this occasion, and that they had been at play upon the turntable on other occasions, and within the observation and to the knowledge of the employees of the defendant, the jury were justified in believing that children would probably resort to it, and that the defendant should have anticipated that such would be the case.

As it was in fact, on this occasion, so it was to be expected that the amusement of the boys would have been found in turning this table while they were on it or about it. This could certainly have been prevented by locking the turntable when not in use by the company. It was not shown that this would cause any considerable expense or inconvenience to the defendant. It could probably have been prevented by the repair of the broken latch. This was a heavy catch, which, by dropping into a socket, prevented the revolution of the table. There had been one on this table weighing some eight or ten pounds, but it had broken off and had not been replaced. It was proved to have been usual with railroad companies to have upon their turntables a latch or bolt, or some similar instrument. The jury may well have believed that if the defendant had incurred the trifling expense of replacing this latch, and had taken the slight trouble of putting it in its place, these very small boys would not have taken the pains to lift it out, and thus the whole difficulty have been avoided. Thus reasoning, the jury would have reached the conclusion that the defendant had omitted the care and attention it ought to have given—that it was negligent, and that its negligence caused the injury to the plaintiff. The evidence is not strong and the negligence is slight, but we are not able to say that there is not evidence sufficient to justify the verdict. We are not called upon to weigh, to measure, to balance the evidence, or to ascertain how we should have decided if acting as jurors. The charge was in all respects sound and judicious, and there being sufficient evidence to justify the finding, we are not authorized to disturb it.

3d. It is true, in many cases, that where the facts are undisputed, the effect of them is for the judgment of the court, and not for the decision of the jury. This is true in that class of cases where the existence of such facts come in question rather than where deductions or inferences are to be made from the facts. If a deed be given in evidence, a contract proven, or its breach testified to, the existence of such deed, contract, or breach, there being nothing in derogation of the evidence, is no doubt to be ruled as a question of law. In some cases, too, the necessary inference from the proof is so certain that it may be ruled as a question of law. If a sane man voluntarily throws himself in contact with a passing engine, there being nothing to counteract the effect of this action, it may be ruled as a matter of law that the injury to him resulted from his own fault, and that no action can be sustained by him or his representatives. So if a coach driver intentionally drives within a few inches of a precipice, and an accident happens, negligence may be ruled as a question of law. On the other hand, if he had placed a suitable distance between his coach and the precipice, but by the breaking of a rein or an axle, which could not have been anticipated, an injury occurred, it might be ruled as a question of law that there was no negligence and no liability. But these are extreme cases. The range between them is almost infinite in variety and extent. It is in relation to these intermediate cases that the opposite rule prevails. Upon the facts proven in such cases, it is a matter of judgment and discretion, of sound inference, what is the deduction to be drawn from the undisputed facts. Certain facts we may suppose to be clearly established from which one sensible, impartial man would infer that proper care had not been used, and that negligence existed; another man, equally sensible and equally impartial, would infer that proper care had been used, and that there was no negligence. It is this class of cases, and those akin to it, that the law commits to the decision of a jury. Twelve men of the average of the community, comprising men of education and men of little education, men of learning and men whose learning consists only in what they have themselves seen and heard, the merchant, the mechanic, the farmer, the laborer; these sit together, consult, apply their separate experience of the affairs of life to the facts proven, and draw an unanimous conclusion. This average judgment thus given it is the great effort of the law to obtain. It is assumed that twelve men know more of the common affairs of life than does one man, that they can draw wiser and safer conclusions from admitted facts thus occurring than can a single judge.

In no class of cases can this practical experience be more wisely applied than in that we are considering. We find, accordingly, although not uniform or harmonious, that the authorities justify us in holding in the case before us, that although the facts are undisputed, it is for the jury and not for the judge to determine whether proper care was given, or whether they establish negligence.

In Redfield on the Law of Railways, vol. 2, p. 231, it is said: "And what is proper care will be often a question of law, where there is no controversy about the facts. But ordinarily, we apprehend, where there is any testimony tending to show negligence, it is a question for the jury." Quimby v. Vermont Central Railroad, 23 Vermont, 387; Pfau v. Reynolds, 53 Illinois, 212; Patterson v. Wallace, 1 McQueen's House of Lords Cases, 748.

In Patterson v. Wallace, 1 McQueen's House of Lords Cases, 748, there was no controversy about the facts, but only a question whether certain facts proved established negligence on the one side, or rashness on the other. The judge at the trial withdrew the case from the jury, but it was held in the house of lords to be a pure question of fact for the jury, and the judgment was reversed.

In Mangam v. Brooklyn Railroad, 38 New York, 455, the facts in relation to the conduct of the child injured, the manner in which it was guarded, and how it escaped from those having it in charge, were undisputed. The judge at the trial ordered a non-suit, holding that these facts established negligence in those having the custody of the child. The Court of Appeals of the State of New York held that the case should have been submitted to the jury, and set aside the non-suit.

In Detroit and W. R. R. Co. v. Van Steinburg, 17 Michigan, 99, the cases are largely examined, and the rule laid down that when the facts are disputed, or when they are not disputed, but different minds might honestly draw different conclusions from them, the case must be left to the jury for their determination. See among other cases cited, the following: Carsley v. White, 21 Pickering, 256; Rindge v. Inhabitants of Coleraine, 11 Gray, 157; Langhoff v. Milwaukee and P. R. R. Co., 19 Wisconsin, 497; Macon and Western Railroad v. Davis, 13 Georgia, 68; Renwick v. New York Central Railroad, 36 New York, 132.

It has been already shown that the facts proved justified the jury in finding that the defendant was guilty of negligence, and we are of the opinion that it was properly left to the jury to determine that point.

Upon the whole case, the judgment must be affirmed.

JUDGMENT AFFIRMED.

Negligence—Liability of Municipal Corporations for Injuries Resulting from Failure to Keep Streets in Repair.

HULL v. CITY OF KANSAS.

Supreme Court of Missouri, Jefferson City, January Term, 1874.

Present, Hon. WASH ADAMS, } Judges.
" W. B. NAPTON, }
" H. M. VORIES, }

1. **Rule Where the Injury is in Part Caused by Unmanageable Horse.**—Where, in driving a buggy on the street of an incorporated town, the plaintiff's horse became uncontrollable by reason of the lines getting entangled under his tail, so that, in backing, the horse fell into a hole which the city authorities had negligently left open, whereby the horse and buggy were injured, it was held that the plaintiff was entitled to recover damages of the municipal corporation, although the fact that the horse became for the time unmanageable contributed to the producing of the injury.

2. **Case Affirmed.**—The principle laid down in Hunt v. Pownall, 9 Vt. 411, applicable to such cases, affirmed.

Napton, J., delivered the opinion of the court.

This action was to recover damages for an injury to a horse and buggy, alleged to have been occasioned by a hole in a street, negligently left uncovered by the city authorities. The facts appeared to be that the driver of the buggy, when attempting to turn from one street into another, got one of the lines entangled under the horse's tail, which caused the horse to commence backing, and, as the driver was about to jump out, the horse fell into the hole in the embankment on which the street was built.

The court, on the trial, declared the law to be "that it was the duty of the defendant to keep its streets in a proper state of repair, so that they should be reasonably safe for travel, and if the defendant permitted one of its streets to be and remain out of repair, and that at the time said street was so out of repair the plaintiff's horse and buggy was being driven along the same, and, without the fault of the driver, the horse and buggy of plaintiff was injured by reason of said street being out of repair, then the plaintiff is entitled to recover, even though such injury was the combined result of accident and of the defendant's neglect to keep said street in repair, *provided* the driver of said horse was in no fault."

The court refused to declare the law as asked by the defendant, that if the defect in the street was not the sole cause of the injury, no recovery could be had, and therefore if before the accident the driver of the horse had lost all control over him, and the

horse continued uncontrollable at the time of the accident, the plaintiff could not recover.

Another instruction was asked, that if this occurred on Sunday, and the plaintiff was the owner of the horse and buggy, and had hired them out on that day from his livery stable, no recovery could be had.

There was a verdict and judgment for plaintiff.

The point presented by the instructions in this case, I understand, was decided at the last term at St. Joseph in the case of Bassett v. City of St. Joseph,* in which case this court adopted the view taken by the New Hampshire court in Winship v. Enfield (42 N. H. 202), and declined to follow the decisions in Massachusetts, referred to in the brief of defendant's counsel. The Circuit Court of Jackson County evidently adopted the views of the New Hampshire cases, and determined that although the injury was the result of accident in the temporary loss of control over the horse, yet if that accident would have resulted in no damage had the street been in proper repair, the city must be held responsible.

Indeed, it is not very clear that the Massachusetts cases go to the extent of holding that a mere temporary loss of control over the horse driven along the street would relieve the city from responsibility. It is held that where the horse escapes from the driver entirely, or is totally ungovernable, or is a vicious animal, the damage occasioned is not chargeable to the city or town, because it ultimately occurs in a street or at a place where the street is out of repair.

In this case the driver had not lost the control of the horse except during the short period of his backing into the hole, and if no such hole had been there, no damage would have occurred.

In the case of Hunt v. Pownall (9 Vt. 411) Redfield, J, said: "In every case of damage occurring on a highway, we could suppose a state of circumstances in which the injury would not have occurred. If the team had not been too young or restive; or too old, or too headstrong, or the harness had not been defective, or the carriage insufficient, no loss would have intervened. It is against these constantly occurring accidents that towns are required to guard in building highways. The traveler is not bound to see to it that his carriage and harness are always perfect, and his team of the most manageable character and in the most perfect training, before he ventures upon the highway. If he could be always sure of all this, he would not require any further guarantee of his safety, unless the road were absolutely impassable. If the plaintiff is in the exercise of ordinary care and prudence, and the injury is attributable to the insufficiency of the road conspiring with some accidental cause, the defendants are liable.

This is in substance the position of the Circuit Court in its instructions in this case.

Judgment affirmed.

Judges Wagner and Sherwood absent.

Prosecutions by Information of Offences under the Internal Revenue Laws.

THE UNITED STATES v. EBERT.

District Court of the United States, Western District of Missouri, March Term, 1874.

Before Hon. ARNOLD KREKEL, District Judge.

1. **Criminal Practice—Information.**—Offences arising under the internal revenue laws being misdemeanors merely, and not "infamous," may be prosecuted by information filed by the district attorney.

The facts sufficiently appear from the opinion of the court.

* Since reported, 53 Mo. 290.

E. L. King, for the motion, relied on the fifth amendment to the constitution.

Jas. S. Botsford, district attorney, relied on and cited 1 Bish. Crim. Proc. §§ 604, 611; Comm. v. Waterborough, 5 Mass. 257; Adams v. Woods, 2 Cranch, 336; *Ex parte* Marquand, 2 Gall. 552; Walsh v. United States, 3 Wood. & M. 341; Levy v. Burley, 2 Sumn. 355; Parsons v. Hunter, ib. 419; United States v. Mann, 1 Gall. 3; Territory v. Lockwood, 3 Wall. 236; United States v. Shephard, 1 Abb. U. S. R. 431; United States v. Waller, 1 Sawyer C. C. 701; 1 Stat. at Large, 119, § 32; 13 Stat. at Large, 305, § 179; 14 Stat. at Large. 145 § 179.

KREKEL, J.—This is an information filed by the district attorney alleging that defendant was a manufacturer of cigars, and as such had failed to execute bond as required by law. To this, defendant files his motion to quash, alleging, in substance, that cases of the kind can not be prosecuted by information, but must be by indictment. This brings up the question—first, is the case here presented within the act of July 13, 1866, which provides that "all fines, penalties and forfeitures which may be imposed or incurred shall and may be sued for and recovered, when not otherwise provided, in the name of the United States, in any proper form of action or by any appropriate form of proceeding before any circuit or district court."

The provision cited is found in the revenue act, and there can be no doubt that the intention of congress was to sanction or provide for a class of cases most frequently occurring under the revenue laws. Looking at the language employed—"a proper form of action"—it is obvious that congress here had reference to existing forms of action, and when using the terms immediately following—"or by any appropriate form of proceeding"—it intended to enlarge the former by giving authority to provide new and suitable forms and proceedings to meet cases as they might arise. It is well known that at the time of framing and adopting the constitution, fines and penalties could be and were largely recovered by information; and there can scarcely be any doubt but that congress had reference, when speaking of "a proper form of action," to that practice which at the time of the enactment of the law cited, prevailed in a number of the states. It must, then, be taken that the case under consideration, and the class of cases to which it belongs, comes within the provisions of the statute cited.

The second question is, had congress the power to pass the act of 1866, and especially the provision cited, thereby doing away with the necessity of a grand jury passing upon cases arising under internal revenue laws? The fifth article of the amendments of the constitution of the United States provides that "no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury." It will be observed that this provision covers infamous crimes only. It is not necessary to define what is here meant by infamous, for it is an undisputed point that misdemeanors, such as the one for which the information under consideration is filed, can not, by any construction or interpretation given by courts, be brought within the term "infamous." At the time of the adoption of the amendment cited, attention was no doubt called to existing constitutional provisions; and had the requirement that all classes of crimes should be passed on by grand juries before trial been intended, suitable language for that purpose would have been employed. Indeed, by the use of the words "capital or otherwise infamous crimes" it may be readily inferred that a grand jury was to pass upon such, and such only; and while the legislature was not bound to limit the holding to answer to that class of cases, but might extend the requirement to any offences, yet the decision of a grandjury was secured only to the person or persons charged with thehigher classes of crimes specified.

The act of March 30, 1790, passed by congress soon after the adoption of the constitution, strongly supports the view here

taken. In the thirty-second section of said act, providing the time within which prosecutions shall be commenced, it enacts, "nor shall any person be prosecuted, tried or punished for any offence not capital, nor for any fine or forfeiture under any penal statute, unless the indictment or *information* for the same shall have been found or instituted," thus affirming that there existed the distinction between crimes and other offences contended for. As sustaining these views, see United States v. Shephard, 1 Abb. U. S. 431, and United States v. Waller, 1 Sawyer C. C. 701.

Under these views of the court, the case under consideration may be prosecuted by information, and the motion to quash is overruled.

Action by Insurance Company Against Incendiary —In Whose Name Brought.

ÆTNA INS. CO. v. HANNIBAL & ST. JOSEPH R. R. CO.

U. S. Circuit Court, Eastern District of Mo., March Term, 1874.

Before DILLON AND TREAT, JJ.

1. Insurance—Subrogation—Assignment—Action.—Where insured property has been destroyed by a wrong-doer and the insurer has paid to the owner on the policy less than the value of his loss, and taken a partial assignment of his right, he can not sue the wrong-doer in his own name for the injury, either as at common law or under the statute of Missouri. The action must be in the name of the owner of the property destroyed.

The plaintiff insured the personal property of one Myron H. Balcom, situate adjoining the defendant's railway, for $1,900. Within the lifetime of the policy, property covered by it to the value of $2,214 was destroyed by the carelessness of the defendant's servants in the use of its locomotive engine. The insurance company paid Balcom in full satisfaction for all claim under his policy $1,050, and received from him a written instrument reciting the foregoing facts, and assigning to it all his right to recover on account of said loss against the railroad company, reserving all rights in excess of the $1,050.

The petition, which is in the name of the insurance company, sets forth the foregoing facts and asks a judgment against the railroad company for the $1,050. The defendant demurs because the cause of action is not assignable either by operation of law or by act of the parties, and because the plaintiff is not entitled to maintain an action in its own name.

Lucien Eaton, for the plaintiff; *James Carr*, for the defendant.

DILLON, Circuit Judge—The property destroyed exceeded in value the amount insured, and the rule of law has been long settled that the insurance company, on the payment of the loss, can not sue the wrong doer who occasioned it in its own name. The suit, though for the use of the insurer, must be in the name of the person whose property was destroyed. The wrongful act was single and indivisible, and gives rise to but one liability. If one insurer may sue, then if there are a dozen each may sue, and if the aggregate amount of all the policies falls short of the actual loss, the owner could sue for the balance. This is not permitted, and so it was held nearly a hundred years ago in a case whose authority has been recognized ever since, both in Great Britain and in this country. London Assurance Co. v. Sainsbury, 3 Doug. 245, 1783, in which the Exchequer Chamber unanimously affirmed the judgment of the K. B. for the defendant; Rockingham, etc., Ins. Co. v. Bosher, 39 Maine, 253, and cases cited; Hart v. Western Railroad Corporation, 13 Metc. 99, where the subject is fully gone into by Chief Justice SHAW: Conn., etc., Ins. Co. v. N. Y., etc., R. R. Co., 25 Conn. 265, 278; Peoria, etc., Insurance Company v. Frost, 37 Ills, 333. Flanders on Ins. pp. 360, 481, 591. But it is insisted that the provision of the Missouri statute, that every action shall be prosecuted in the name of the real party in interest, though it declares that the provision shall not authorize the assignment of a thing in action not arising out of contract (Gen. Stats. 1865, p. 651, sec. 2.), changes the rule. However it might be if the amount paid by the insurer to the assured had equalled or exceeded the value of the property, and the assured had made a full assignment, it is plain that this case falls within all the reasons of the rule itself, as expounded by Buller and Mansfield in the case in Douglas above cited, and which is the foundation of the law on this subject. The demurrer to the petition is sustained.

JUDGMENT ACCORDINGLY.

Leave was given the plaintiff to amend and make Balcom plaintiff on the record, but as the latter, as well as the defendant, was a citizen of Missouri, no amendment, so as to give the court jurisdiction, was practicable, and the plaintiff submitted to a non-suit.

Negligence—Servants of Corporation—Evidence.

CAROLINE T. PARKER v. BOSTON & HINGHAM STEAMBOAT COMPANY.

Supreme Judicial Court of Massachusetts.

[Courtesy of Henry N. Sheldon, Esq., of Boston.]

The defendant corporation ran a line of passenger and freight boats as common carriers between Boston and Hingham. While one of their boats was loading at the wharf in Boston, the plaintiff, in passing over the gangway plank from the wharf to the boat, for the purpose of going to Hingham as a passenger, was thrown into the water and injured by the end of the plank slipping from the boat. This action was brought to recover for the alleged negligence in not having this plank properly secured and tended.

The plaintiff introduced evidence of the injuries which she claims to have suffered, and of their effect upon her nervous system. Susie Parker testified, against defendant's objection, that the plaintiff's health was decidedly worse at the time of the trial than it had been two months after the accident.

One Bradshaw testified for plaintiff that he went on board the boat over the same plank just before the plaintiff; that it was not resting as it should be; and that hands were taking in freight close to this plank. He was then allowed to state, against defendant's objection, that he called the attention of these hands to the plank.

One Hildreth testified that he went over the same plank before the plaintiff; that it was then from six to eight inches from falling off; that he went back and spoke to a man who was taking in baggage over the same plank; and he was then allowed, against defendant's objection, to state that he told this man there should be some one to see to this gangway plank, or some one would fall in.

There was no other evidence to show who these men or "hands" were, or whether they were in the employ of defendants; but defendants called the captain of the vessel, and there was no express denial at the trial that the men who took on board freight and baggage were employed by defendants. The jury found for the plaintiff, and the defendants alleged exceptions.

L. M. Child, for defendants.

The opinion of Susie Parker as to plaintiff's comparative health at different times was inadmissible. Ashland v. Marlborough, 99 Mass. 47. Testimony of what was said and done by or to men at work near the gangway should not have been received. It did not appear that the work was done for defendants or at their request. Fisk v. Chester, 8 Gray, 506; Everest v. Wood, 1 Car. & P. 75. These men may have been expressmen carrying on board their own freight. On the evidence they were mere volunteers. Nor can the plaintiff's failure to prove her case be supplied by the fact that defendants gave in evidence no denial that these men were their servants. A non-denial can be used only to support some direct evidence of an affirmative. Commonwealth v. Hardiman, 9 Gray, 136.

Tolman Willey, for plaintiff, argued that the statement of Susie Parker was not of an opinion, but of a fact within her own knowledge, and that notice of the dangerous condition of the plank to the "hands" was admissible.

The court held that there had been no error at the trial, and ordered judgment on the verdict for the plaintiff.

United States Supreme Court—Recent Decisions.

Life Insurance—Willful Exposure—Death while Horse-racing.—Travelers' Insurance Company v. Seaver. Error to Circuit Court for Vermont. The main questions in this case were whether the court below erred in instructing the jury that the driving of a race, when regarded as an exposure of the life of the insured to unnecessary peril, was to be considered in the light in which fair-minded people of the community looked upon it, and if, under the ordinary regulations of such matches such fair minded people would not regard the driving of the match as within the provisions of a life policy against such exposure, then the representatives of the insured, who was killed while so driving, could recover; and whether it was error for the court to instruct the jury that, if the insured was killed by the reckless driving of his competitor, and not by the ordinary mischance of the race, then there should be a recovery. It is held that the court erred in both instances; that the question of willful exposure was for the jury, after all the facts were before them, and that, if the intentions of the competitor of the insured were as bad as the charge of the court implied, and the reckless driving was for the purpose of winning the race at all hazards, still the fact did not take the case out of the clause of the policy against willful exposure. It was against just such danger the company had intended to protect itself. Reversed. Mr. Justice MILLER delivered the opinion.

Bills of Exceptions—Incorporating Rule of Court—Measure of Damages for Infringement of Patent.—No 265. Washington and Alexandria Steam Packet Company v. Sickels. Error to the Supreme Court of the District of Columbia. This was an action by Sickels to recover for the use of his cut-off for the saving of coal in operating steam engines. The judgment below was for the patentee, and the company, bringing the case here for review, obtained a reversal for errors, which will appear in the following statement of the substance of the opinion: The statute of limitations having been pleaded, the court say that while the right to plead it is no more within the discretion of the court than other pleas, when the refusal of the court to permit the plea to be filed is based on the allegation that it is not filed within the time prescribed by the rules of practice adopted in that court, it is necessary that the party excepting to the refusal shall incorporate the rule in his bill of exceptions, or this court will presume that the court below construed correctly its own rules. Such rules are indispensable to the dispatch of business and the orderly administration of justice, and it must be presumed that the court below is familiar with the construction and course of practice under them. On the merits it is said that the rule of damages in actions at law for infringement of the rights of patentees has long been established in this court to be the customary price at which the patentee has licensed the use of his invention, where a sufficient number of licenses or sales have been made to establish a market value. The reason for this rule is still stronger where the use of the patented invention has been, with the consent of the patentee, express or implied, without any rate of compensation fixed by the parties. (In this case the compensation was to be the value of three-fourths of the amount of fuel saved.) Mr. Justice MILLER delivered the opinion.

Constitutional Law—Duty on Tonnage.—No. 248. Peete v. Morgan. Appeal from the Circuit Court for the Eastern District of Texas. In this case Morgan, a citizen of New York, running two lines of steamers between ports in Louisiana and ports in Texas, obtained a perpetual injunction to restrain the appellant, health officer of Galveston, from exacting of him certain tonnage duties laid upon his shipping to defray the expenses of quarantine regulations. The decree below is affirmed here, the court holding in substance that while the legislature may lay a tax in some proper form to maintain the quarantine system of the state, the present tax is outside the jurisdiction of the state to enforce, being a duty on tonnage. Mr. Justice DAVIS delivered the opinion.

Discharge in Bankruptcy—Debts Due the United States.—No. 252. United States v. Herron. Error to the Circuit Court for the District of Louisiana. In this case the government sued on the official bond of one Collins, Herron being a surety. The defence was a discharge under the bankrupt act. The court below sustained the plea, and the judgment was accordingly. The judgment is here reversed, the court holding that a discharge under the bankrupt act does not bar a debt due the United States. This conclusion is sustained by the uniform construction of similar legislation in this country and in England. Mr. Justice CLIFFORD delivered the opinion.

Land Law—Spanish Grant.—No. 247. United States v. Heirs of Junerarity. Appeal from the Circuit Court for Louisiana. This was a reversal of a decree adjudging parties represented by the appellees entitled to certain land in Louisiana, under a Spanish patent issued to one Ramos, the court holding that the claim attempted to be set up by the petitions in the case can not be sustained. Mr. Justice HUNT delivered the opinion.

Bill of Review by Creditor.—No. 257. First National Bank of Troy v. Cooper *et al.* Appeal from the Circuit Court for the Northern District of New York. The bill in this case was filed by the bank, a creditor of an insolvent corporation (the Troy Woolen Company), to review a decree of the district court confirming the report of a referee and allowing a claim of Cooper, Vail & Co. for $67,000. The circuit court decided that it could not review this decree at the instance of a creditor, and dismissed the bill. That decree is affirmed here, the court holding that the bank does not show any equity sufficient to justify the court in granting the relief sought. Mr. Justice STRONG delivered the opinion.

Power of Attorney by Husband and Wife.—Holladay v. Daily. Error to the Supreme Court of Colorado Territory. In this case Ben Holladay and wife joined in executing a power of attorney to sell their real estate in a section of the Territory. The attorney sold, making the deed in the name of Holladay alone. Thereupon the latter repudiated the transaction and sought to hold the property. The court below sustained the sale, and that judgment is here affirmed, the court holding that a power of attorney to sell and convey real property given by a husband and his wife authorizes a conveyance by the attorney of the interest of the husband by a deed executed in his name alone. If, it is said, the wife in fact has no interest in the property, such individual deed passes the entire estate. Mr. Justice FIELD delivered the opinion.

Memphis Paving Contracts.—In the case of The City of Memphis v. Brown *et al.*, from the Tennessee Circuit Court, an appeal by the city to reverse a decree recovered against it by the appellees, upon contracts for paving its streets, this court affirms the decree except as to the item for damages for not creating a sinking fund for the payment of the bonds issued in pursuance of the contracts, the item for the services of attorney, and that for services in collecting bills for paving. As to these the decree is reversed, and the court below is directed to enter a decree in accordance with these views. Mr. Justice HUNT delivered the opinion.

Decisions in Ninth Federal Circuit.

In the case of Lee v. Rogers, adm'r, &c., Circuit Judge SAWYER, of the Ninth Federal Circuit (whose opinion is reported in full in the Pacific Law Reporter, March 3, 1874), ruled the following points:

1. Paid Judgment—Sale.—A sale of lands under an execution issued upon a judgment which had been fully paid, is void.

2. Assignee of Paid Judgment.—W. had a judgment against C., which was the first lien on his property. T., also, had a judgment, which was the second lien on the property. C. paid W.'s judgment in full, but took an assignment of it in the name of his hired man, who paid nothing for it. Afterwards, to avoid an attachment, C. confessed a judgment in favor of L., for a debt previously due him, which became a lien upon the property, and, in order to give L. a preference over T., C. procured an assignment to him of W.'s judgment, for which no additional consideration was paid, but L. was not aware that it had been paid. C. afterwards confessed a judgment in favor of F., which also became a lien on the property. L. afterwards sold the lands on W.'s judgment and became the purchaser. Afterwards F. became the purchaser of the same lands under his own judgment. *Held:*

1. That as to F., L. was not a *bona fide* assignee of W.'s judgment for a valuable consideration, and that his sale was void.

2. That by his purchase F. acquired the title to the land.

3. Power of Attorney—Incidental Powers.—L. executed a power of attorney to H., authorizing him to collect his said judgments against C., by sales under execution, etc., to receive the money thereon, "arbitrate or compound" the same, and for that purpose to employ counsel. After the aforesaid sales F. brought an action against L. to annul the said sales and conveyances to L., as clouds on his, F.'s title. H. consulted counsel, who advised him that the said sales under W.'s judgment after payment, were void, and L.'s title invalid. *Held*, that as incident to the powers expressly given to collect said judgment, arbitrate and compound the same, in connection with subsequent instructions from L. by letter, H. had power to authorize counsel to appear in said action and consent to a judgment annulling said sales, upon terms that enabled him to realize the amount due to L. on his judgment.

4. Actions against Belligerents.—The existence of war does not prevent the citizens of one belligerent power from taking proceedings for the protection of their own property in their own courts, against the citizens of the other, whenever the latter can be reached by process.

In Nicklin, complainant, v Wythe *et al.*, defendants, before SAWYER and DEADY, JJ (Pacific Law Reporter, March 10, 1874), it appeared that G. conveyed lots 1 and 2, in the town of Salem, to W., and in consideration of such conveyance said W. and wife afterwards conveyed to said G. lands belonging

to said wife, in exchange for said lots 1 and 2, and it was held that in the absence of evidence to show that the conveyance of lots 1 was 2 were made to W. with the assent of his wife, there was a resulting trust in her favor, and her subsequent vendees were entitled to a decree against the heirs of W. for a conveyance of the legal title.

Supreme Court of Missouri—Decisions at the March Term, 1874.

Continuance—Effect of the Answer as Evidence.—Thomas J. Bartholow *et al.* v. Thomas Campbell Eliza Hays and George W. Thurmond. This was an action on a promissory note made by the defendants, Campbell and Hays, in favor of the defendant Thurmond, and by him endorsed to the plaintiffs for value. The defendant Thurmond failed to answer. The other defendants filed separate answers, alleging that the note was procured from them through fraud for the accommodation of the defendant Thurmond. Mrs. Hays' answer differed from Campbell's in that it charged fraud against both Campbell and Thurmond. It was alleged that the plaintiffs had notice of this fraud before they discounted the note. Two questions arise, the first relating to the refusal of a continuance. The court—after stating the general rule that the continuance of causes by the trial court is generally very much in the sound discretion of the court; that every intendment in such cases should be in favor of the sound and proper exercise of this discretion; and that, unless it plainly appears from the record that this discretion has been unsoundly or oppressively exercised, the supreme court ought not to interfere—proceed to say: "The affidavit in this case shows that the absent witness resided in the city of St. Louis, where the trial was had; that she had been sick for ten days before the day of trial—confined to her room; that this fact was known to the defendant; that the defendant did not know until the last two or three days that the absent witness would not become able to attend the trial; that no witness in attendance, or whose presence could be procured *in time*, could prove the same facts expected to be proved by the absent witness. But it nowhere appears in the affidavit that there were not others who were not in attendance who could prove the same facts. On the contrary, it is plainly apparent from the affidavit that there were such other persons, and it does not appear that any effort had ever been made to procure any such evidence during the ten days after the witness named in the affidavit was known to be sick, or within the three days after which it was known to the defendant that the absent witness would not be able to appear at the trial. The defendant seems to have remained wholly inactive until the case was called for trial; and it is not negatived in the affidavit that the application was made for delay or vexation. The defendant is required to show some diligence in such cases. In the absence of diligence on the part of the defendant to avail herself of every means in her power to get ready for trial, this court will not be authorized to reverse the judgment on the ground that the court trying the cause has unsoundly exercised its discretion in the premises. (Cline v. Brainerd, 28 Mo. 341; Globe Mutual Ins. Co. v. Carson, 31 Mo. 218; State v. Murphy, 46 Mo. 430.)

"The second ground of error related to the ruling of the court below in excluding the answer of the defendant Campbell as evidence for the defendant Hays. It was claimed that as no replication had been filed by the plaintiff as to this answer, its truth was therefore admitted, and that the defendant, Mrs. Hays, who had filed a separate answer, might put Campbell's answer in evidence for herself. But the court held, expounding the statute which relates to the effect of the answer as evidence (2 Wagn. Stat. p. 1019, § 36), that although the answer, not being denied, was admitted by the plaintiff so as to make it evidence for Campbell, yet it was not therefore evidence for Mrs. Hays, and that there was no error in rejecting it when offered by her."

VORIES, J., delivered the opinion of the court. The other judges concurred, except SHERWOOD, J., who did not sit.

Supreme Court of Missouri—List of Cases Decided Monday.

The Supreme Court of Missouri, Monday morning, on convening, delivered a large batch of opinions, as follows, all the judges being present:

BY JUDGE ADAMS.

Wolf v. Walter; affirmed.
Bailey v. Rosenthal; affirmed.
Helmerichs v. Gehrke; affirmed.
Bennett v. Torlina; affirmed.
Chouteau *et al.* v. Rowse; affirmed.
O'Fallon v. Nicholson; affirmed.
O'Neill v. Capelle; affirmed.
Schasles v. Woodburn Sarven Wheel Co.; affirmed.
Bloebgum v. Seatheny; affirmed.
Bobb v. Taylor; affirmed.
Woods, assignee, etc., v. Atlantic Insurance Co.; affirmed.
Norton v. Ittner *et al.*; affirmed.
Lackland v. Garesche, garnishee, etc.; affirmed.

BY JUDGE WAGNER.

Harney v. Sullens; affirmed.
Reid v. Piedmont and Arlington Insurance Co.; affirmed.
Tyler v. City of St. Louis; affirmed.
Haenschen v. O'Bannon; affirmed.
Ruff v. Doyle's administratrix; affirmed.
Kellogg v. Schnaake; reversed and remanded.
State *ex rel.* Cavender v. City of St. Louis; affirmed.
Carlin v. Cavender; judgment modified and affirmed.
Parker v. Scudder; affirmed.
Ricords v. Watkins; affirmed.
Estel & Co. v. St. Louis and S. E. R. R. Co.; affirmed.
Bishop v. O'Connell; affirmed.

BY JUDGE NAPTON.

Brink v. Collier; affirmed.
Claflin & Co. v. Hafkemeyer *et al.*; affirmed.
Price v. Roetzel, administratrix; reversed and remanded.
Williams v. Mellon; reversed and remanded.
Huth v. Carondelet Dock Co.; reversed and remanded.
LeBeau v. Armitage; reversed and remanded.
Market v. City of St. Louis; general term reversed and special term affirmed.
St. Vrain v. Columbia Bottom Levee Co.; reversed and remanded.
Thomas *et al.* v. Pullis *et al.*; affirmed.

BY JUDGE SHERWOOD.

Primm *et al.* v. Raboteau; affirmed.
Seiners *et al.* v. Kleeburg *et al.*; reversed and remanded.
State use Clifford v. Beldsmeier; reversed and remanded.
Gillett v. Union National Bank; affirmed.
Kefferstein v. Knox; reversed.

BY JUDGE VORIES.

Wilson *et al.* v. Taylor; affirmed.
Cocker v. Cocker; affirmed.
Township Board of Education v. Heath; affirmed.
Doering v. Saun; affirmed.
Stagg v. Eureka Tanning Co.; reversed and remanded.
Daly v. Butchers and Drovers' Bank; reversed and remanded.
Gibson v. Coons; affirmed.
Edmondson v. Garnhart; affirmed.
Mutual Life Ins. Co. v. Board of Assessors; affirmed.

The Arkansas Homestead Law.

Our correspondent at Little Rock, Frank M. Parsons, Esq., sends us the following note of the exposition placed upon the homestead law of Arkansas by the Supreme Court of that state, in the case of Norris *et al.* v. Kidd. They decide that, under their constitution and homestead law, a homestead is a mere *possessory* right—a particular estate carved out of the fee by constitutional provision. It is a *personal* privilege conferred by the constitution of the state upon a resident, which he may insist upon or waive at his option. It must be selected by the owner in the manner provided by the act of March 28, 1871, and in no other way can a sale upon execution be prevented. Mere occupancy is not sufficient to constitute property a homestead; but after the selection has been properly made, occupancy is necessary to give it the character of a homestead. The homestead may be selected at any time before actual sale. Any house or town lot (or tract of land, not exceeding 160 acres, owned by a judgment debtor, may be selected by him as a homestead, whether he resided upon it at the time of the rendition of the judgment or not. The entire building need not be used as a residence. It is enough if the owner and his family actually occupy some part of the house as a residence. A failure to select in the manner provided by the act of March 28, 1871, before sale, is a waiver of the homestead right, and it can not after that be set up in defence in ejectment. The selection of a homestead does not prevent the lien of a judgment from at-

taching; it merely suspends the sale of the property; the lien attaches to the reversion or remainder.

Our correspondent adds, by way of a note, that it would seem that the execution might be enforced by the *sale of this remainder*, subject to the debtor's "possessory right," and that this could be done by an assignee in bankruptcy, but that view is not considered in the opinion.

Judge BENNETT dissented as to the manner of reaching these conclusions.

Taking Private Property for Public Use—Damages, when Fixed.

Our Boston correspondent, Henry N. Sheldon, Esq., sends the following note of a recent decision of the Supreme Judicial Court of Massachusetts in the case of William L. Bent v. The Merchants' Ins. Co.:

This is a petition for the assessment of the value of the estate of the defendants, taken by the United States for the extension of the post-office under the provisions of that act. The receivers of the Merchants' Insurance Company are the general owners of the estate; Charles L Haley is the lessee, and Avery & Harris are sub-lessees under Haley. At the trial in the superior court with a jury, it was contended on behalf of the United States, that the time at which the value of the land should be estimated was the date of the petition. But the court ruled that it should be estimated as at the time of the verdict and trial. The petitioners excepted to this, among other rulings of the presiding judge. The supreme court has now sustained the exceptions, set aside the verdict and ordered a new trial. The rescript is as follows:

1. The value of the land should have been estimated as of the date of the petition. The jury having been instructed otherwise, the exception of the petitioner must be sustained on this point.

2. The sum of the damages of the owners of all the interests in the land taken, can not exceed the value of the whole land. And such is a fair construction of the instructions to the jury.

Obiter Dicta.

The Albany Law Journal has hit upon a happy name for its funny column. It calls it *obiter dicta*. The following are specimens:

The Law Journal (London), speaking of the close of the Tichborne case, says: If the learned counsel engaged in the case had thrown up their wigs and proffered each other a back at a game of leap-frog in Westminster Hall, no one who knows what they have suffered would have found fault with their somewhat undignified expressions of joy.

A Nevada judge, after the jury had been empannelled and counsel ready to proceed, pulled out a revolver and judiciously remarked: "If any man goes frollicking around the court-room during the trial of this case, I shall interrupt him in his career." The strictest decorum prevailed.

On the trial of a person charged with stealing ducks, the prisoner's counsel asked the farmer from whom they had been stolen, "how he knew" they were his ducks, and the farmer went on to describe their peculiarities. "Why," said the lawyer, "these ducks can't be such a rare breed; I have some very like them in my own yard." "Likely enough," replied the farmer, "they are not the only ducks I have had stolen lately."

One can hardly appreciate the "mixed emotions" with which the counsel in a certain important case listened to the following dialogue between the judge and the foreman of the jury, at the close of the judge's charge:

Judge—"Is there any point on which the jury would like further explanation?"

Foreman—"There are two terms of *law* that have been a good deal used during the trial, that I should like to know the meaning of—they are *plaintiff* and *defendant*."

The judge explained.

Notes and Queries.

The following letter was not written for publication, but we shall print it and take the consequences. We, however, omit our friend's name, notwithstanding there is nothing in his letter that need have made him feel so modest:

CAPE GIRARDEAU, Mo., April 12, 1874.

EDITORS CENTRAL LAW JOURNAL:—In answer to some correspondent in the CENTRAL LAW JOURNAL of the 12th ult., you say that "professional opinion in St. Louis is somewhat divided as to the construction of the 5th section of the homestead act," and although you express no opinion as to the proper construction, I infer, from the authorities cited, that you are inclined to hold that it passes *the fee*. I have always so understood the law. The language, it seems, will admit of but one construction, although somewhat ambiguous. As to what the law *was*, your correspondent does not ask, and it is unnecessary to enquire.

It is granted that the legislature is not the recognized tribunal for the interpretation of acts passed by prior legislatures, but as they have the power to repeal, alter or amend, it is submitted that any amendment adopted by them subrogates—if I may use the term—the old to the new law, and fixes, upon the whole, the *intention* of the last legislature.

If this be true, it seems to me that there ought to be no further doubt as to whom the *fee* passes, for the general assembly of 1873, Gen'l Acts, p. 16, so amended the old law as to allow *femes covert* to file a claim to a homestead, even against the will of the baron, and any conveyance made by him of said estate, without being joined by her, is *absolutely void*—in contradistinction to the old rule that a husband may convey in fee, even if his wife does not join, subject, of course, to her dower.

If the general assembly intended by this act to give a mere life-estate, it seems to me that a very different wording would have been used.

I do not write this for publication, but simply to suggest what seems to me to be an additional reason in support of the theory that the widow ultimately takes the fee.

*** We have received several queries from correspondents, which we shall attend to as soon as we get time.

Book Notices.

REPORTS OF CASES AT LAW AND IN EQUITY IN THE SUPREME COURT OF THE STATE OF IOWA. Edited by C. C. COLE, LL.D., Judge of the Supreme Court of Iowa, Professor in the Law Department of the Iowa University, Editor of Western Jurist, etc. Vol. 1. Des Moines, Iowa: Mills & Co. 1874. NEW EDITION.

The first 12 volumes of Iowa Reports were not stereotyped, and the plates of the remainder of the first 21 volumes were mostly destroyed by the great Chicago fire. In consequence of this, and of the very considerable general demand of late years for the Reports of the Iowa Supreme Court, it has lately been quite impossible to procure a full set of them at a moderate price. Hence the necessity for a new edition, and the publishers very wisely resolved to secure success to their enterprise by deserving it.

The Iowa Reports justly stand high in professional estimation. This has, we think, very largely resulted from the painstaking and thorough manner in which the judges discharge their duties. For the past 12 years the judges, imitating the example of the Supreme Court of the United States, have strictly followed the plan of examining and deciding every case *in conference* before it is assigned to a judge to prepare the opinion. It is known to us that many of the appellate courts in the country pursue the opposite course and assign the cases before they are settled by the judges. The bar of every state where this is done should protest against it. It is a prolific source of error and of ill-considered law.

The Iowa court has had the good fortune, also, to have three most excellent and capable reporters—Clarke, Withrow and Stiles.

The present series is *unabridged*, and the head-notes are entirely new, and have been prepared by Mr. Justice COLE himself. His name is a sufficient guaranty that his work has been well done. The present editor is part of the judicial history of the state. For the past eleven years he has been one of the judges of the court, and before that he was an extensive practitioner at the bar. This experience has peculiarly fitted him to undertake the editorial management of the new edition of the Reports, and gives to the head-notes and the copious foot-notes an especial value. To each case has been added a note referring to every subsequent Iowa case in which *the case* to which the note is appended has been cited. This is a new and valuable feature in this republication, and of itself will finally induce many persons to dispose of the first edition in order to procure the second.

We congratulate the distinguished editor upon the excellent and thorough manner in which his work upon this volume has been done, and we doubt not that the future volumes will keep up to the standard of the present one.

SOUTHERN LAW REVIEW for April. Nashville: Frank T. Reid & Co.

This number is fully up to its usual standard in point of variety and ability. Chancellor Cooper continues his paper on Modern Theories of Government. John C. Reed, Esq., of Lexington, Georgia, has a paper on Codification, which, however impracticable some of his views may seem, contains a great many excellent suggestions well made, and will amply repay a perusal. The Parkman Murder is graphically described by Chas. J. Swift, Esq., of Columbus, Georgia. Mr. Phelan of Memphis entertains us with a number of quaint extracts on Legal Presumptions. Mr. Hutchinson of Memphis furnishes a thoughtful article on Executions by Separate Creditors against the Joint Effects of the Partnership. The Privilege Tax is discussed by J. S. Wiltse, Esq., of Chattanooga. Mr. Daniel of Lynchburgh, Virginia, furnishes an article upon Exchange and Re-exchange and Damages upon Dishonored Negotiable Paper, which we presume is a chapter from his forthcoming work on Negotiable Paper. Not the least interesting part of the Review are its "Notes," among which we find the following foot-note, by Judge Cooley, taken from the last edition of Story on the Constitution.

We have now received three numbers of the WESTERN INSURANCE REVIEW, edited and published at St. Louis by H. L. Aldrich, Esq., and have perused each number with much pleasure and profit. To an insurance lawyer we should judge that it would be a great favorite. Its legal department, edited by H. E. Mills, Esq., of the St. Louis bar, gives in a condensed form a great many insurance decisions, fire and life, of various courts throughout the country, while important opinions are frequently published in full. From the typographical beauty of the Review, the richly tinted paper on which it is printed, and the great amount of advertising which it carries, we judge that the insurance business, by which we presume it is chiefly supported, must be in a highly prosperous condition.

Legal News and Notes.

—BENDER, the notorious Kansas murderer, has been caught for the fifth or sixth time. It is pretty certain now that they have got the right man. He emerged from the mountains near Salt Lake City.

—THE Brazilian Bishop of Olinda has been tried, convicted and sentenced by a civil court, the Supreme Tribunal of Justice, at Rio, upon a charge of "attempting to destroy an article of the constitution."

—A DISPATCH from London states that John Karslake has resigned the attorney generalship, in consequence of illness.

—THE Erie Railway company has given a consolidated mortgage of its road to the Farmers' and Merchants' Land and Savings company of New York, to secure the payment of $30,000,000. It is recorded in every county along the line of the road.

—Of the $75,000 appropriated by the legislature of New York to pay the counsel who prosecuted the Tammany Ring thieves, Mr. Peckham, son of the late Judge PECKHAM, of the court of appeals, gets the principal share, and Charles O'Conor declares that he has earned all he gets.

—THE following colloquy occurred in an English divorce case: Mr. Sergeant Tindal—"He treated her very kindly, did he not?" Atkinson—"Oh, yes, very; he kissed her several times." Mr. Sergeant Tindal—"And how did she treat him?" Atkinson—"Well, she retaliated."

—THE legislature of Mississippi, at its recent session, passed an excellent temperance law. It embraces the principles of the so-called "local option" incorporated in the laws on this subject which have been enacted in the several states of the Northwest. These laws provide for the license or refusing to license retail traffic in intoxicating liquors in any township or incorporated city, accordingly as a majority of the legal voters may decide. The Mississippi statute requires the signature of a majority of men over twenty-one years of age, and of women over eighteen years of age, in any locality, to a petition asking for a license before it can issue.

—THE learned editor of the Bench and Bar Review writes us as follows: "I received your JOURNAL, and am very greatly obliged for your kind notice. The criticism, however, requires that I should set you right, being somewhat premature. When we were looking about for a name for the 'Review,' we struck upon 'Bench and Bar' as one likely to answer in all particulars. Afterwards, but before we issued it, we were made aware of the existence of the Chicago periodical. We then wrote to Callaghan & Co., and received the reply that they had *discontinued* its publication.

"Very truly,

A. SCHAUMBERG."

—AN amusing incident is related of a woman in England, whose husband, a wealthy man, died suddenly without leaving any will. The widow, desirous of securing the whole property, concealed her husband's death and persuaded a poor shoemaker to take his place while a will could be made. Accordingly he was closely muffled in bed as if very sick, and a lawyer was called to write the will. The shoemaker in a feeble voice bequeathed half of all the property to the widow. "What shall be done with the remainder?" asked the lawyer. "The remainder," replied he, "I give and bequeath to the poor little shoemaker across the street, who has always been a good neighbor and a deserving man." The widow was thunder-struck with the man's audacious cunning, but did not dare expose the fraud, and so two rogues shared the estate.

—QUITE a stir was created in the court of claims the other day in consequence of the application of Mrs. Belva A. Lockwood for admittance as an attorney of that court. After considerable debate, in which the lady acquitted herself creditably, Chief Justice DRAKE took the matter under advisement, and was still advising upon it at last accounts. The difficulty in the way of her admission is two-fold. First, the rules of the court require that a person to be admitted must be a *man* of good moral character, etc. Secondly, Mrs. Lockwood has a husband, and consequently is "dead in law." It is stated, however, that she is in good standing and practice before the other courts of the district, and if denied admission by the court of claims it is said her friends will appeal to congress for the passage of a declaratory act to the effect that the law is not designed to authorize the exclusion, on account of sex, of any practicing attorney in good standing.

—OUR sanctum was honored on Tuesday with a call from Mrs. Myra Bradwell, editor of the Chicago Legal News. We had always regarded Mrs. Bradwell as one of the most remarkable of American women; but had hardly expected to meet a lady that converses with the same graceful ease and precision which characterize her written compositions. Her paper is probably as extensively read and with as much profit to the profession as any legal publication in the United States. We know this is saying much, when we consider the success which has attended the brilliant Albany Law Journal and the staid old Legal Intelligencer of Philadelphia; but from the reports of our agents and canvassers, we do not doubt that it is true. As an instance of Mrs. Bradwell's ability to overcome difficulties, we may note that her establishment was so completely burned out in the great Chicago fire, that nothing but a prayer-book was saved. Nevertheless, the News appeared on its next publication day as usual, and since then a new printing office has been purchased and its prosperity has been greater than ever. This is the more remarkable when we consider that although the Legal News establishment was well insured, only three per cent. of the insurance money was paid.

—THE judgment in the case of Fox v. Penn Mutual Life Insurance Company, recently rendered in a Philadelphia court, is causing no little comment, both in the insurance and secular press. Lee, the party whose life was insured for the benefit of Fox, represented himself as a man of temperate habits when the reverse was the case, as he died within a year after the policy was issued, of disease superinduced by excessive drinking. Soon after the policy was written the officers of the insurance company were apprised of the fraud practiced on them, cancelled the policy and offered to return the premium received, which offer was refused by the beneficiary, and the suit was brought soon after the death of Lee.

It seems to us that the true course for the company to have pursued as soon as the fraud was discovered, was to have brought a suit in equity to set aside the contract on the ground of fraud. As this would have been a purely legal question, a sympathetic jury could not have outraged the plainest principles of justice. Does not good policy require of the managers of life companies, as soon as an attempted fraud is discovered, to take immediate measures to annul the policy? Better by far fight the living swindlers than their legal representatives, who are often innocent parties.—*Western Insurance Review.*